

SUPREME COURT: BRONX COUNTY

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INDEX#

RENE GOTAY and NANCY GOTAY,

Plaintiffs,

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK,
 THE NEW YORK CITY POLICE DEPARTMENT,
 POLICE OFFICER GREGORY HERNANDEZ, individually and
 in his official capacity as a New York City Police Officer,
 POLICE OFFICER JOHN DOE (UCO SHIELD# 7868),
 (the name "John Doe" being fictitious as the true names of police
 officer shield# 7868 is presently unknown) individually and
 in his official capacity as New York City Police Officer,
 and POLICE OFFICERS JOHN DOES (the names "John Does"
 being fictitious as the true names and number of police officers that
 were in five police cars are presently unknown) individually and
 in their official capacity as New York City Police Officers,

Defendants.

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Plaintiffs, by their attorneys, FRAIDEN & FRAIDEN LLP, as and for a VERIFIED
 COMPLAINT, upon information and belief, allege that at all times mentioned herein:

1. That the defendant, THE CITY OF NEW YORK, was and still is a Municipal Corporation duly incorporated and existing under and by virtue of the laws of the State of New York.
2. That the plaintiffs herein have complied with all of the conditions precedent to brining this action against the above named defendants. A Notice of Claim was timely served upon the defendants within 90 days after the date of occurrence pursuant to law; more than 30 days have elapsed since service of said Notice of Claim and said claims remain unadjusted, and defendant has failed and refused to make adjustment, and this action is brought within 1 year and 90 days of the occurrence complained of.
3. That defendants failed to serve on plaintiffs' counsel written Demand for an Examination of the plaintiffs in accordance with General Municipal Law 50-h(2) or have conducted said examinations.
4. That defendant, THE NEW YORK CITY POLICE DEPARTMENT, was and still is an agency, department, subdivision or unit of the defendant THE CITY OF NEW YORK
5. That the defendant, THE CITY OF NEW YORK owned the defendant THE NEW YORK CITY POLICE DEPARTMENT.

6. That the defendant, THE CITY OF NEW YORK operated the defendant THE NEW YORK CITY POLICE DEPARTMENT.
7. That the defendant, THE CITY OF NEW YORK managed the defendant THE NEW YORK CITY POLICE DEPARTMENT.
8. That the defendant, THE CITY OF NEW YORK supervised the defendant THE NEW YORK CITY POLICE DEPARTMENT.
9. That the defendant, THE CITY OF NEW YORK controlled the defendant THE NEW YORK CITY POLICE DEPARTMENT.
10. That the defendant, THE CITY OF NEW YORK employed the defendant THE NEW YORK CITY POLICE DEPARTMENT.
11. That the defendant, THE CITY OF NEW YORK instructed the defendant THE NEW YORK CITY POLICE DEPARTMENT.
12. That the defendant, THE CITY OF NEW YORK trained the defendant THE NEW YORK CITY POLICE DEPARTMENT.
13. That the defendants POLICE OFFICER GREGORY HERNANDEZ was and still is a duly appointed and acting officer, servant, employee and agent of defendant THE NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the defendant THE CITY OF NEW YORK.
14. That the defendants POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) was and still is a duly appointed and acting officer, servant, employee and agent of defendant THE NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the defendant THE CITY OF NEW YORK.
15. That the defendants POLICE OFFICERS JOHN DOES were and still are duly appointed and acting officers, servants, employees and agents of defendant THE NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the defendant THE CITY OF NEW YORK.
16. That the defendant, THE CITY OF NEW YORK supervised the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES.
17. That the defendant, THE CITY OF NEW YORK controlled the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES.
18. That the defendant, THE CITY OF NEW YORK employed the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868)

POLICE OFFICERS JOHN DOES.

19. That the defendant, THE CITY OF NEW YORK instructed the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES.
20. That the defendant, THE CITY OF NEW YORK hired the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICERS JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES.
21. That the defendant, THE CITY OF NEW YORK trained the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES.

AS AND FOR A FIRST CAUSE
FALSE ARREST

22. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
23. That on 5/17/2017 at approximately 9:48pm in front of "THE HUT" located at 1489 Williamsbridge Road, Bronx, New York, plaintiff RENE GOTAY was approached by defendant POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), a member of THE NEW YORK CITY POLICE DEPARTMENT, and asked if he would like to purchase an iphone and an ipad mini.
24. That plaintiff agreed to purchase the iphone for \$40 and gave defendant POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) \$40. Thereafter, plaintiff was stopped, searched, seized, placed in handcuffs, and arrested by the defendants in front of "THE HUT" located at 1489 Williamsbridge Road, Bronx, New York. The plaintiff was taken into custody, verbally abused, and humiliated by the defendants and held in confinement and imprisoned for an extended period of time.
25. That defendants lacked sufficient and reasonable cause for believing that a crime had been committed and for believing that the plaintiff had committed said crime.
26. That defendants lacked probable cause for believing that a crime had been committed and for believing that the plaintiff had committed said crime.
27. That plaintiff was aware of his arrest and did not consent to being arrested.
28. That defendants lacked legal authority to effect the arrest of the plaintiff.
29. That defendants failed to follow proper procedures and acted improperly in arresting the plaintiff.

30. That as a result of the aforementioned action by the defendants, plaintiff was wrongfully and falsely arrested and detained.
31. That on or about 5/17/2017 criminal proceedings were brought against the plaintiff and said criminal proceedings were dismissed by the Court in a disposition favorable to the plaintiff and on the merits.
32. That plaintiff sustained serious personal injuries solely and wholly as a result of the aforesaid action of the defendants.
33. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.
34. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION
FALSE IMPRISONMENT

35. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
36. That plaintiff Rene Gotay was taken into custody by the defendants and confined and imprisoned for an extended period of time.
37. That plaintiff was aware of his confinement and did not consent to it.
38. The defendants lacked legal authority to imprison the plaintiff.
39. That defendants failed to follow proper procedures and protocols and acted wrongfully in taking the plaintiff into custody and confining him and imprisoning him.
40. That as a result of the aforementioned action of the defendants, plaintiff Rene Gotay was caused to lose his liberty and be incarcerated improperly and without good cause.
41. That as a result of the action of the defendants, plaintiffs sustained serious personal injuries solely and wholly as a result of the aforesaid action of the defendants.
42. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.
43. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION**DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION AND USC 1983 BY POLICE OFFICER GREGORY HERNANDEZ, POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), AND POLICE OFFICERS JOHN DOES**

44. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
45. That defendants POLICE OFFICER GREGORY HERNANDEZ, POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), AND POLICE OFFICERS JOHN DOES were duly appointed and acting officers of THE NEW YORK CITY POLICE DEPARTMENT acting under color of law.
46. That plaintiff Rene Gotay is a citizen of the United States and a resident of Bronx County in the State of New York.
47. That defendants, by their conduct and actions in unreasonably searching, unreasonably seizing, falsely arresting, handcuffing, confining and imprisoning the plaintiff in the absence of reasonable and probable cause, assaulting, battering, and failing to intercede on behalf of plaintiff, failing to protect him from the unjustified and unconstitutional treatment he received, the defendants acting with animus, and under color of law and without lawful justification, intentionally, maliciously, and with deliberate indifference to and/or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of plaintiff's constitutional rights as guaranteed under 42 U.S.C. 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.
48. That defendants seized United States Currency from the plaintiff converting the money to their own purposes and needs without the consent of the plaintiff who was the lawful owner of the United States Currency.
49. That defendants deprived the plaintiff of the following rights under the United States Constitution:
- a. Freedom from summary punishment;
 - b. Freedom from cruel and inhuman punishment;
 - c. Freedom from illegal search and seizure;
 - d. Freedom from assault to the person of the plaintiff;
 - e. Freedom from battery during the arrest process;
 - f. Freedom from malicious prosecution;
 - g. Freedom from the taking of his property.
50. That defendants deprived the plaintiff of his rights, privileges and immunities guaranteed and

secured by the Fourth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of New York including his rights to liberty and to be secure in his person and free from the use of unreasonable force.

51. As a result of the foregoing, plaintiff was deprived of his liberty, and was caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION
DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION AND
U.S.C. 1983 BY THE CITY OF NEW YORK AND THE NEW YORK CITY POLICE
DEPARTEMENT

52. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
53. That defendant THE CITY OF NEW YORK acting through its police department, department of correction and through defendants THE NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER GREGORY HERNANDEZ, POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES had in effect actual and/or de facto policies, practices, customs, and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.
54. At all times material to this complaint, defendant THE CITY OF NEW YORK acting through its employees, agents, servants, and representatives had in effect actual and/or de facto policies, practices, customs, and usages of failing to require its employees, agents, and servants including THE NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER GREGORY HERNANDEZ, and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868) and POLICE OFFICERS JOHN DOES to comply with the rules and regulations of the The City of New York and The New York City Police Department, and in failing to require compliance with the United States Constitution, the New York State Constitution, and the laws of the United States and the State of New York.
55. The aforementioned customs, practices procedures and rules of defendants THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT include but are not limited to: arresting persons known to be innocent in order to meet "productivity goals"; falsely swearing out criminal complaints and/or lying and committing perjury during sworn testimony to protect other officers and meet productivity goals; failing to supervise, train, instruct, and discipline police officers thereby encouraging misconduct and exhibiting deliberate indifference towards the constitutional rights of persons within the officers jurisdiction; discouraging police

officers from reporting the corrupt or unlawful acts of other officers; retaliating against officers who report police misconduct; withholding evidence and/or misrepresenting or falsifying evidence; failing to require that probable cause must be present before an arrest can be made, failing to require a search warrant or exigent circumstances be present before a person or person's property is searched and seized; and failing to intervene to prevent the above mentioned practices when they reasonably could have been prevented with proper supervision.

56. Pursuant to the aforementioned policies, practices, and/or customs, the employees, representatives and/or agents failed to intervene in or report defendants violations of plaintiff's rights.
57. At all times material to this complaint, defendant THE CITY OF NEW YORK acting through its employees, agents, servants, and representatives including defendants THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER GREGORY HERNANDEZ, POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES had in effect actual and/or de facto policies, practices, customs, and usages of failing to properly train, screen, supervise, and discipline employees and police officers, and of failing to inform the individual defendants' supervisors of the need to train, screen supervise and discipline said defendants. Such failure to train, screen supervise, and discipline results in unreasonable searches, unreasonable seizures, arrests not supported by reasonable or probable cause, assaults, batteries, and the excessive use of force.
58. The aforementioned policies, practices, customs and usage were a direct and proximate cause of the unconstitutional conduct alleged herein.
59. All of the foregoing acts by defendants deprived plaintiff of his federally protected rights including but not limited to the constitutional rights enumerated herein.
60. Defendants deprived the plaintiff of his rights, privileges and immunities guaranteed and secured by the Fourth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of New York including his right to liberty and to be secure in his person and free from the use of unreasonable force.
61. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.
62. As a result of the foregoing, plaintiff was deprived of his liberty, and was caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION
MALICIOUS PROSECUTION

63. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
64. That defendants, their employees, servants, and agents acted improperly and wrongfully in arresting and detaining the plaintiff.
65. That defendants, their employees, servants, and agents improperly and wrongfully initiated criminal proceedings against the plaintiff Rene Gotay and attempted to prosecute the plaintiff Rene Gotay.
66. That on 5/17/2017 until the time of dismissal of the charges defendants deliberately and maliciously prosecuted the plaintiff, an innocent man, without probable cause, by filing or causing a complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.
67. That said criminal complaint was not supported by non-hearsay allegations.
68. That defendants, their agents, servants and employees, failed to take reasonable steps to stop the prosecution of the plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the plaintiff.
69. That defendants, their employees and agents acted intentionally and with malice in initiating and prosecuting said criminal proceedings against the plaintiff Rene Gotay in the absence of probable cause for the initiation of criminal proceedings and in the absence of a reasonable chance of prevailing.
70. That the commencement of these criminal proceedings was malicious and began in malice and without probable cause, so that the proceedings could succeed by the defendants.
71. That as a result of the aforementioned criminal proceedings that were instituted against him, plaintiff was compelled to obtain an attorney to defend himself.
72. That as a result of the aforementioned criminal proceedings that were instituted against him, plaintiff was compelled to appear in court on multiple occasions to defend himself from the false charges in said criminal proceeding.
73. That aforesaid criminal proceeding was terminated by the Criminal Court of the City of New York, Bronx County in favor of the plaintiff, on the merits, and in a manner consistent with plaintiff's innocence.
74. That as a result of the action of the defendants, plaintiffs sustained serious personal injuries

solely and wholly as a result of the aforesaid action of the defendants.

75. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.

76. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION

NEGLIGENT HIRING, SCREENING, RETENTION, SUPERVISION, AND TRAINING

77. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.

78. That defendants, THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, were under a duty to hire competent agents, servants, and employees and to terminate incompetent agents, servants, and employees.

79. That defendants, THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, hired agents, servants, and employees including the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES, that lacked the requisite judgement, discretion, experience, training, and competence.

80. That there were prior complaints concerning the agents, servants, and employees of defendants THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, including the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES, involving their dereliction of duty, lack of competence, lack of judgment and discretion, failure to follow proper procedures and protocols, intentional wrongdoing, excessive use of force, violations of constitutional rights, including complaints of prior similar incidents to those complained of herein.

81. That the defendants THE CITY OF NEW YORK, and THE NEW YORK CITY POLICE DEPARTMENT intentionally, knowingly, and/or with reckless indifference did disregard and/or failed to investigate the complaints involving the defendants' employees, agents, and servants, did investigate such incidents but failed to take such corrective action as was necessary, and therefore acted recklessly and with gross indifference and callous disregard in failing to remedy the situation.

82. That there were prior incidents concerning the agents, servants, and employees of defendants THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, including the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES, involving their dereliction of duty, lack of competence, lack of judgment and discretion, failure to follow proper procedures and protocols, intentional wrongdoing, excessive use of force, violations of constitutional rights, including prior similar incidents to those complained of herein.
83. That, upon information and belief, the defendants intentionally, knowingly, and/or with reckless indifference did disregard and/or failed to investigate the prior incidents involving the defendants' employees, agents, and servants, did investigate such incidents but failed to take such corrective action as was necessary, and therefore acted recklessly and with gross indifference and callous disregard in failing to remedy the situation.
84. That defendants THE CITY OF NEW YORK, and THE NEW YORK CITY POLICE DEPARTMENT, were negligent and reckless in their hiring of and in their retention of their agents, servants, and employees, including the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES, which caused the plaintiff to sustain injury without any negligence on the part of the plaintiff contributing thereto.
85. That defendants, THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, negligently and recklessly failed to terminate agents, servants, and employees including the defendants POLICE OFFICER GREGORY HERNANDEZ and POLICE OFFICER JOHN DOE (UCO SHEILD# 7868), and POLICE OFFICERS JOHN DOES, which caused the plaintiff to sustain injury, without any negligence on the part of the plaintiff contributing thereto.
86. Defendants acted recklessly and with gross negligence. Punitive damages are claimed.
87. Plaintiffs will rely upon the doctrine of Res Ipsa Loquitor.
88. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.
89. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SEVENTH CAUSE OF ACTION

ASSAULT AND BATTERY

90. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
91. That defendants forcibly placed their hands on the plaintiff against plaintiff's wish and against plaintiff's will. Defendants intentionally, and maliciously assaulted and battered the plaintiff in that they had the real or apparent ability to cause imminent harmful and/or offensive bodily contact, and defendants made violent and/or menacing acts which threatened such contact to the plaintiff and caused the plaintiff to suffer apprehension of such contact.
92. That defendants in a hostile and/or offensive manner touched the plaintiff without plaintiff's consent and with intention of causing offensive bodily contact to the plaintiff, and defendants battered the plaintiff by placing their hands on the plaintiff, seizing the plaintiff and placing him in handcuffs, punching, kicking, hitting, dragging, throwing, and terrorizing the plaintiff while he was in custody and being transported to the hospital and court, and also caused the plaintiff to fear of death or injury, suffer anxiety, emotional, and psychological trauma.
93. That defendants acted intentionally.
94. That defendants acted without privilege and without permission from the plaintiff.
95. That plaintiff sustained serious personal injuries solely and wholly by reason of the aforesaid actions of the defendants, made intentionally, maliciously, publicly and falsely; that as a result thereof plaintiff was subjected to great indignities, personal embarrassment, humiliation and ridicule, and was greatly injured in his credit and circumstances and caused to suffer much pain in the mind and body.
96. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.
97. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR AN EIGHTH CAUSE OF ACTION
NEGLIGENCE

98. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
99. That the defendants, their agents, servants, employees, and representatives dragged the plaintiff.
100. That the defendants, their agents, servants, employees, and representatives negligently caused serious personal injuries solely and wholly as a result of the aforesaid actions of the

defendants.

101. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.

102. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A NINTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

103. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.

104. That the defendants' aforementioned acts were extreme, shocking and outrageous.

105. That the defendants' aforementioned acts were intended to cause infliction of emotional distress to the plaintiffs or disregarded a substantial probability of causing emotional distress to the plaintiffs.

106. That the defendants' aforementioned acts did cause infliction of emotional distress on the plaintiffs.

107. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set forth in Section 1602 applies to the facts of this case.

108. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A TENTH CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

109. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.

110. That the defendants aforementioned acts and omissions negligently caused a traumatic event that caused the plaintiffs to sustain emotional distress.

111. That defendants negligently caused emotional distress and damage to plaintiff. The acts and conduct of the defendants were the direct and proximate cause of emotional injury to plaintiffs.

112. Upon information and belief, the limitations of liability set forth in Article 1601 of the CPLR do not apply to the causes of action set forth herein or one or more of the exemptions set

forth in Section 1602 applies to the facts of this case.

113. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
LOSS OF SERVICES

114. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs with the same force and effect as if herein set forth at length.
115. That at all times mentioned herein, plaintiff NANCY GOTAY was and still is the spouse of plaintiff RENE GOTAY.
116. That at all times mentioned the plaintiff NANCY GOTAY was entitled to receive from the plaintiff RENE GOTAY love, affection, and companionship, and has been caused to incur various expenses in an effort to cure plaintiff RENE GOTAY of the injuries sustained.
117. That by reason of the foregoing the plaintiffs were caused to sustain damages and are entitled to recover against the defendants money damages in a sum in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiffs demand judgment as against the defendants in the FIRST CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the SECOND CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the THIRD CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the FOURTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the FIFTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the SIXTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the SEVENTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the EIGHTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the

NINTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the
TENTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, in the
ELEVENTH CAUSE OF ACTION in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with punitive damages, together with costs, interest, and disbursements of this action.

Dated: Bronx, New York
March 1, 2018

Fraiden & Fraiden LLP
Attorneys for Plaintiffs
327 East 149th Street
Bronx, New York 10451
(718) 993-9911

STATE OF NEW YORK: COUNTY OF BRONX :

NANCY GOTAY being sworn says: I am the plaintiff in the action herein; I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

x Nancy Rufina Gotay

Sworn to before me this
1 day of March 2018

Victoria Caban
NOTARY PUBLIC

VICTORIA CABAN
Notary Public, State of New York
No. 03-1925912
Qualified in Bronx County
Commission Expires 03/09/2021

STATE OF NEW YORK: COUNTY OF BRONX :

RENE GOTAY being sworn says: I am the plaintiff in the action herein; I have read the annexed Verified Complaint know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

x

RENE GOTAY

Sworn to before me this
11 day of MARCH 2018

Victoria Caban

NOTARY PUBLIC

VICTORIA CABAN
Notary Public, State of New York
No. 034925913
Qualified in Bronx County
Commission Expires April 4, 2021